

APPLICANTS: Bacus *et al.*  
U.S.S.N.: 10/735,118

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required restriction between the recited Markush group of species. The Examiner alleges that the claimed subject matter of each group is both independent and distinct, and that restriction is therefore proper. Applicant respectfully disagrees and submit that the required restriction unduly limits Applicant's invention to only certain preferred embodiments and species, and is thus improper.

#### Summary Of The Interview

Pursuant to 37 C.F.R §1.133(b), Applicants provide the following summary of the telephonic interview held between Andrew J. Warner, James G. Cullem, Supervisory Examiner Shanon A. Foley and Quality Assurance Specialist Yvonne Eyler on May 11, 2007.

During the interview, Applicant's attorneys indicated their concern with the outstanding restriction requirement, since the subject matter as claimed is in fact simply preferred embodiments of a single unitary invention: The identification of six proteins whose expression/activity has been identified by Applicants as being correlated to the responsiveness of HER-2 over-expressing tumors to HER-2 therapeutics, and the use of such proteins as predictive biomarkers. In sum, Applicant's attorney's asserted the outstanding restriction requirement of October 4, 2006 is improper for the reasons previously set forth in the Summary Of The Interview section of Applicant's response of November 30, 2006.

Supervisory Examiner Shanon A. Foley and Quality Assurance Specialist Yvonne Eyler indicated that they agreed with Applicants' attorneys that the outstanding restriction requirement is confusing, improper and should be re-valuated and that a new Restriction Requirement should and would be issued.

Applicant's Attorneys agreed and thanked Supervisory Examiner Shanon A. Foley and Quality Assurance Specialist Yvonne Eyler for taking the time to speak them.

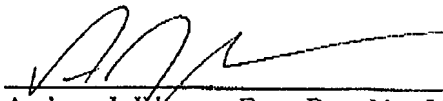
#### Conclusion

The claims are believed to be in condition for immediate allowance. Reconsideration and alteration of the present Restriction Requirement to reflect an election of species requirement rather than an election of group requirement is respectfully requested. Early and favorable consideration and allowance of these claims is earnestly solicited. If there are any questions

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regarding these remarks, the Examiner is requested to call the undersigned attorney at the telephone number provided.

Respectfully submitted,

  
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